U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 0 8 2014 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director found that the petitioner had not established herself as "an individual of extraordinary ability."

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner submits a brief and additional evidence. The petitioner asserts that "the Service **ignored** objective evidence,...failed to consider relevant evidence,...and misconstrued the evidentiary standard applicable to the Alien of Extraordinary Ability visa classification." (Emphasis in original.) The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). For the reasons discussed below, upon review of the entire record, the petitioner has not established her eligibility for the exclusive classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.*

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The director found that the petitioner had not established that the received awards were nationally or internationally recognized, as the record lacked "information concerning the associations conferring these awards." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish that the evidence meets every element of this criterion. Not only must the petitioner demonstrate her receipt of prizes and awards, she must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, goes beyond the awarding entity.

The director's request for evidence specifically requested documentary evidence to demonstrate the national or international recognition of the prizes or awards, including:

- The criteria used to grant the prizes or awards;
- The significance of the prizes or awards, to include the national or international recognition that the prizes or awards share;
- The reputation of the organization or panel granting the prizes or awards;
- Who is considered for the prizes or awards, including the geographic scope for which candidates may apply; [and]
- How many prizes or awards are awarded each year.

On appeal, the petitioner submitted one letter from the former Regional Development Officer of the Americas which, combined with additional evidence in the record, establishes that the petitioner's award from the is internationally recognized.

Regarding the "Player of the Match" awards and the claimed national awards, while the petitioner provided documentation of her receipt of the awards, she failed to establish that the remaining awards are nationally or internationally recognized. For example, there is no evidence that the awards and the were recognized beyond the awarding entity. Furthermore, the record lacks evidence that the Atlanta awards are national, rather than regional, in nature.

Section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires receipt of more than one nationally or internationally recognized prize or award for excellence. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically,

the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require a single instance of service as a judge or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *Cf. Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005, at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

In response to the director's request for evidence and on appeal, the petitioner states that, "[r]egardless of whether [] [the petitioner]'s international awards are sufficient in scope and prestige to hurdle the evidentiary burden…[the petitioner] is the face of all women's cricket in this country and is unquestionably regarded as such by all experts in the field" and asserts that her "achievements in the field" meet this criterion. The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. Moreover, the regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to her occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The regulatory language precludes the consideration of comparable evidence for this criterion, as there is no indication that eligibility for visa preference in the petitioner's occupation as a cricket player cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3) and specifically, this criterion. In fact, as indicated in this decision, the petitioner provided evidence of awards in her field. Where an alien is simply unable to meet or submit documentary evidence to satisfy a criterion, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

In light of the above, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The director discussed the submitted evidence and found that the petitioner failed to establish that the evidence was qualifying. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Notably, the petitioner also failed to provide additional evidence relating to this criterion in response to the director's request for evidence for this criterion. The petitioner has, therefore, abandoned this issue. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO). *See also Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director concluded that the submitted articles "do not appear to be announcements concerning the [] [petitioner] and her work" and that "[n]o evidence has been presented concerning these publications and their circulation or readership." Thus, contrary to the petitioner's assertions on appeal, the director did not impose an inappropriate restriction on the evidence presented in support of the petition. As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to her work in the field for which classification is sought, the director's statement that the material should "concern[] the [][petitioner] and her work" is consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." The director's request for evidence specifically requested evidence "that the published material was published in professional or major trade publications or other major media," including circulation information, to establish that the articles appeared in qualifying media. In response to the director's request for evidence, the petitioner asserts that the articles were published in "top cricket publications," but did not provide any independent, objective evidence to support such claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, USCIS need not accept evidence offered for the first time with a subsequent filing. *Cf. Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner seeks evidence to be considered, she must submit the documents in response to the director's request for evidence. *Id.*

Even if the petitioner had provided circulation information in response to the director's request for

evidence, rather than for the first time on appeal, she provided circulation information for only three of the websites. Regarding the information provided for the nytimes.com and wsj.com websites, the submitted articles were about the sport of cricket and not the petitioner. Regarding the third website, espncricinfo.com, although the petitioner provided circulation information, evidence that simply mentions the petitioner's name, quotes the petitioner, or is not otherwise about the petitioner is not published material about the alien relating to her work in the field. An article that is not about the petitioner does not meet this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." *See Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012); *also see generally Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at 1, 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer). On appeal, the petitioner asserts that "[i]n *Muni v. INS,* 891 F. Supp. 440 (N.D. Ill. 1995),..the court noted that the 'articles do not establish that Muni is one of the stars…but that is not the applicable standard.'" While the petitioner is correct that the court found that an article does not have to establish that the petitioner is a "star[]," the court did not find that articles do not have to be about the petitioner. It is insufficient to establish eligibility for this criterion based on any material that only lists, mentions, or indicates the petitioner's name, such as the posting of a player's or team's scores from a cricket tournament on a website. A mention of the petitioner's name in the media does not automatically qualify for the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

In light of the above, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." A review of the record of proceeding, however, reflects that the petitioner submitted sufficient documentary evidence establishing that she has participated as a judge for the and, therefore, meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of the regulation for the reasons outlined below.

Any organization or establishment that retains the services of an individual requires someone competent to provide those services. Thus, the fact that the petitioner has played cricket for organizations or establishments is insufficient. In the case of a leading role, the petitioner must demonstrate how her role fits within the overall hierarchy of the organization or establishment. In the case of a critical role, the petitioner must have contributed to the success of the establishment or organization beyond merely providing necessary services. In addition, the petitioner must demonstrate the distinguished reputation of the organizations or establishments.

The petitioner claimed she satisfied this criterion for the first time in response to the director's request for evidence. In response to the director's request for evidence and on appeal, the petitioner asserts that "[t]he enclosed letters from the [redacted] and numerous other regional and national cricket leagues and associations describe in detail how [] [the petitioner] will serve in pivotal roles."

The regulation at 8 C.F.R. § 204.5(g)(1) requires that evidence of experience "shall" consist of letters from employers. Therefore, letters written by anyone other than the petitioner's current and former employers can only supplement the required evidence for this criterion.

According to the letter from [redacted] Technical Director for the [redacted] the petitioner "has [] offered to partner with our country to offer her talents in future training camps."

According to the letter from [redacted] Coach of the [redacted] the petitioner "will provide a comprehensive valuation of playing abilities of players she observes during an intensive trial process" to [redacted]

According to the letter from [redacted] President of [redacted], the petitioner and [redacted] "are in current discussions around development opportunities for women cricketers in this country" and "[w]ith her support, the [redacted] is planning to host a developmental [redacted]"

According to the letter from [redacted] President of [redacted] they "have invited [the petitioner] to participate in conference call meetings on women's cricket matters and community development" and "are looking forward to have her continuous support in terms of expertise and maturity as we continue to plan and execute action for the development of cricket."

As the plain language requires that the petitioner "has performed in a leading or critical role," future roles cannot be considered under this criterion. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). None of these letters establish that the petitioner had played a leading or critical role for their organization or establishment.

The letter from the petitioner's coach, Mr. combined with additional evidence, states that the petitioner performed in a leading and/or critical role during two tournaments. The record does not, however, contain evidence which establishes that a tournament is an organization or establishment with a distinguished reputation.

According to the letter from Dr. Director of the for the petitioner "assists the in identifying and selecting the top talent in the nation representing the future of women's cricket." The petitioner also asserted that this role satisfied the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). It is not presumed that evidence relating to or even meeting the judging criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. The judging criterion has already been addressed and therefore, the petitioner's role as a judge will not also be considered under this criterion. Furthermore, the leading or critical role must be performed on behalf of the organization or establishment as a whole rather than for a smaller division of an organization or establishment. To demonstrate eligibility through a leading or critical role for a division or committee, the petitioner must establish that the committee is itself an organization or establishment and that it enjoys its own individual distinguished reputation.

All of the submitted letters, including those discussed above, praise the petitioner's skill as a cricket player, outline her accomplishments, and assert that she promotes the sport. None of the letters, however, describe how the petitioner has already performed in a leading or critical role for their organization or establishment, consistent with the plain language of the regulation.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the petitioner's leading or critical role in more than one organization or establishment with a distinguished reputation.

Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for more than one organization or establishment with a distinguished reputation, the petitioner has not established that she meets this criterion.

In light of the above, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

B. Intent to Continue to Work in Area of Expertise

Although the director found that the petitioner did not establish her intent to continue to work in her area of expertise, the evidence in the record, including multiple statements by the petitioner regarding her plans to continue to play cricket, is sufficient to establish that the petitioner meets this requirement.

While the director's discussion regarding the fact that the United States does not have a professional women's cricket team was not relevant to the issue of the petitioner's intent to continue to work in her area of expertise, the current state of U.S. women's cricket is still a relevant discussion.

According to the evidence submitted by the petitioner, "the first USA women's cricket team was assembled in 2009," women's cricket is "in the nascent stages in the United States" and "[c]ricket…back in the States is an amateur sport." USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994); 56 Fed. Reg. at 60899. In *Matter of Racine*, 1995 WL 153319 at *1, *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. Similarly, in the instant petition, the petitioner's has not established her standing in the field, as compared to other elite female cricket players, but rather her standing compared to other cricket players at all levels of play within the United States, a country who is still competing at an amateur level, when other countries are performing at a much more elite level. For example, Chief Executive Officer of the states that they "would like to see [the petitioner] develop into a world-class cricketer" and that they "applaud her effort and interest in improving her game." It does not follow that the petitioner should necessarily qualify for approval of an extraordinary ability employment-based visa petition without evidence that demonstrates that she is at the very top of her field, not just the top of the field for a country that has only recently formed a national team, when the sport is played at a level below that of other countries. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." *Cf. Noroozi*, 905 F.Supp. 2d at 546.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established that her achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that she was among that small percentage at the very top of the field of endeavor.

C. Summary

As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to demonstrate that she satisfies the antecedent regulatory requirement of three types of evidence.

III. CONCLUSION

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.[2] Rather, the proper conclusion is that the petitioner failed to demonstrate that she has satisfied the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[2] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).